

CHAPTER 4. FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

SECTION 3. COMPLIANCE, SURVEILLANCE, AND ENFORCEMENT

293. GENERAL.

A. Article 16 of the Chicago Convention states that the appropriate authorities of each state have the right, without unreasonable delay, to search foreign civil aircraft on landing or departure, and to inspect the certificates and other documents prescribed by the Convention. Sections 40113 and 46101(a)(2) of Title 49, United States Code (U.S.C.) (formerly 313 and 1002 of the Federal Aviation Act (FA Act) of 1958) empower the Administrator to conduct such investigations considered necessary to carry out the provisions of the U.S.C.

B. Section 41703 of Title 49, U.S.C. (formerly § 1108(b) of the FA Act) states that foreign civil aircraft may be navigated in the United States (U.S.) by airmen holding appropriate certificates issued by the state of registry of the aircraft and only if such navigation is authorized by permit, order, or regulation issued by the Department of Transportation (DOT), and in accordance with the terms, conditions, and limitations thereof.

C. Permits issued by DOT under 41302 of Title 49, U.S.C. (formerly § 402 of the FA Act) to foreign air carriers contain specific terms, conditions, and limitations. Among these conditions are requirements that each permit holder comply with the following:

- Operational safety requirements at least equivalent to Annex 6 of the Convention
- All applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the U.S.

D. Section 40109 of Title 49, U.S.C. (formerly § 416(b) of the FA Act) exemptions issued by DOT to foreign air carriers conducting short-term exemption operations (normally no more than 10 flights into the U.S.) also require compliance with subparagraph 293C.

295. COMPLIANCE. Each foreign air carrier operating within the U.S. must comply with each applicable requirement in the Federal Aviation Regu-

lations (FAR) and in accordance with its operations specifications. Additionally, each person operating a U.S.-registered aircraft outside the U.S. must comply with FAR § 91.703 and, if engaged in common carriage operations, FAR § 129.14.

297. SURVEILLANCE.

A. *Purpose.* Aviation safety inspectors (ASI) shall conduct surveillance of each foreign air carrier and its aircraft and operations. The surveillance task is to determine compliance with the FAR and the foreign air carrier's operations specifications. Surveillance of a foreign air carrier shall be conducted on a routine or recurring basis. If a foreign air carrier experiences a series of accidents, incidents, violations, or complaints (that relate to safety), the district office manager holding the foreign air carrier's operations specifications shall initiate surveillance as necessary to resolve any safety deficiencies.

(1) *Surveillance Program Development.* Offices that issue and/or are holders of operations specifications for FAR Part 129 operators shall develop their annual work programs to incorporate any required surveillance "R" items directed under the national program guidelines. Only inspectors who have attended the FAR Part 129 training seminar may accomplish these surveillance items.

(2) *Work Programs.* Normally, surveillance of FAR Part 129 operators shall be accomplished by the office that issues the operations specifications. Surveillance may include routine and unannounced ramp inspections in addition to the "R" items. Geographic units may plan FAR Part 129 surveillance as part of the scheduled work program at the request of the principal inspector and only if the geographic inspector designated to accomplish the surveillance has attended the FAR Part 129 training seminar.

B. *Foreign Air Carriers Operating Foreign-Registered Aircraft.* Volume 6, chapter 2, section 2, contains general information for conducting ramp inspections. This information is considered limited for conducting FAR Part 129 surveillance as it does not

address the differences that inspectors may encounter while inspecting a foreign operator. Normally, principal inspectors shall limit any routine or unannounced ramp inspection of a foreign air carrier conducting operations with foreign-registered aircraft to those operations being conducted in the U.S. and shall normally include only the following inspection items:

- Aircraft markings
- Aircraft airworthiness and registration certificates
- Flight crewmember certificates
- Air traffic compliance
- Taxi and ramp procedures
- Passenger enplaning/deplaning procedures
- Baggage and cargo (especially hazardous cargo)
- Compliance with pilot-in-command (PIC) age 60 policy (Inspectors must ensure that PIC's of foreign- or U.S.-registered aircraft being used in FAR Part 129 operations are in compliance with the FAA's policy. See subparagraph 297C.)

C. Pilot Age Policy and Amendment of Operations Specifications.

(1) *FAA Safety Policy.* A foreign air carrier conducting operations within the U.S. using aircraft having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds (3,400 kg) regardless of the state of registry of the aircraft, must comply with the standard contained in Annex 1 to the Chicago Convention of the International Civil Aviation Organization (ICAO) ("Personnel Licensing," chapter 2, "Licenses and Ratings for Pilots," paragraph 2.1.10.1.); that is, to prohibit a flight crewmember from acting as PIC of an aircraft described above if that person has attained his or her 60th birthday and the aircraft is being operated in scheduled or nonscheduled international air transport operations for remuneration or hire.

(2) *Amendment of Operations Specifications.* Principal operations inspectors (POI) of FAR Part 129 operators shall add to Part A of each of their assigned foreign flag air carriers' operations specifications a new sequentially numbered paragraph that addresses each carrier's compliance with the PIC age 60 policy, as follows:

"[Air carrier name] may not use the services of, nor may any person act as, a pilot in command of any aircraft hav-

ing a passenger seating configuration of more than 30 seats or payload capacity of more than 7,500 pounds (3,400 kg) engaged in operations under the authority of these operations specifications, if the 60th birthday of that person has been attained."

D. Foreign Air Carriers Operating U.S.-Registered Aircraft. Inspectors may conduct routine and unannounced ramp inspections (at any location) of foreign air carriers conducting operations with U.S.-registered aircraft. In addition to including for inspection the items and activities indicated in subparagraph 297B, inspectors should accomplish inspections to determine the following:

- That appropriate U.S. airman certificates are used
- That a U.S. airworthiness certificate is valid for the aircraft
- That an appropriate maintenance program is being used
- That an approved minimum equipment list (MEL) is used, if applicable

E. Frequency of Inspections. Inspectors shall initiate surveillance any time the chief executive officer of the foreign air carrier or the foreign state civil aviation authority requests it in writing. Certain foreign air carriers have requested that FAA inspectors conduct significantly more in-depth inspections of their operations than is required.

F. Need for Diplomacy. Inspectors should take particular care to diplomatically explain, with the foreign air carrier's representative, each discrepancy. Inspectors should also offer suggested corrective action and appropriate FAA assistance to promptly correct each discrepancy. Items not governed by the FAR or approved operations specifications (such as training programs, cabin safety procedures, and non-U.S.-registered aircraft maintenance programs) shall not be inspected, unless a specific written request has been made by either the foreign air carrier or the state civil aviation authority of the foreign air carrier, or when directed by FAA Headquarters.

G. Disagreements Concerning Inspection Findings. If a foreign air carrier's representative disagrees with any inspection findings, the FAA office that conducted the surveillance shall prepare a written report of these inspection findings and recommended corrective actions and address it to the state civil aviation authority. After coordinating with the district office holding the operations specifications of the foreign air carrier and the appropriate regional and Head

quarters personnel (Flight Standards and Regional/Chief Counsel), the initiating office shall mail the report to the state's civil aviation authority with copies to the appropriate regional Headquarters office, to AFS-1, to the Office of International Aviation (AIA-100), and to AGC-200.

H. Serious Safety Deficiencies. If the surveillance reveals serious safety deficiencies that cannot be corrected through positive action by the foreign air carrier's representative, the foreign air carrier principal inspector must directly consult with either the chief executive officer of the foreign air carrier or the state civil aviation authority, or both. This direct contact will usually result in quick correction of any serious safety deficiency (see paragraphs 267 and 269). If the top management of the foreign air carrier or the state civil aviation authority, or both, fail to take positive action, the FAA shall take swift enforcement action to amend or revoke (as necessary) the foreign air carrier's operations specifications.

299. SAFETY ENFORCEMENT. The ultimate goal of the FAA's enforcement policy is to prevent incidents, accidents, and the occurrence of FAR violations. This goal is primarily achieved through education, counseling, and surveillance designed to encourage voluntary compliance. When methods for achieving voluntary compliance fail, violations must be addressed consistently, fairly, and in a manner that reasonably serves the purpose of deterring future violations. Toward those ends, the following policies with respect to foreign air carriers shall be followed:

A. Surveillance of regulated activities shall be conducted as needed to ensure compliance with the regulations, including surveillance of foreign operators that conduct any operations within the U.S. and, if U.S.-registered aircraft are being used, at any place outside the U.S.

B. All reports of violations by foreign operators shall be promptly and thoroughly investigated.

C. Agency personnel responsible for investigation or enforcement, in their relations with foreign air carrier representatives, shall strive to be fair, objective,

and courteous and shall perform their responsibilities in a professional manner.

D. All stages of enforcement investigations and legal or administrative actions shall be completed in a timely manner.

E. Enforcement investigative reports shall contain complete accounts of known circumstances surrounding the violations alleged, including all known, mitigating, or aggravating factors.

F. Enforcement sanctions, both administrative and legal, shall be pursued as evenhandedly as possible and shall be conducted in accordance with the provisions of FAR Part 13.

FYI: FAA Order 2150.3A, "Compliance and Enforcement Program," provides a description of the authority, responsibilities, policies, guidelines, procedures, objectives, and legal aspects of the FAA compliance and enforcement program with respect to foreign operators.

301. ACCIDENT, INCIDENT, NEAR MIDAIR, AND COMPLAINT INVESTIGATION. FAA procedures and responsibilities for aircraft accident and incident (including near midair collisions) notification, investigation, and reporting are prescribed in FAA Order 8020.11, "Aircraft Accident and Incident Notification, Investigation, and Reporting." FAA responsibilities remain unchanged when U.S.-registered or U.S.-manufactured aircraft are involved in an accident or incident in a foreign country. The degree of participation in the investigation, however, is subject to ICAO Annex 13, "Standards and Recommended Practices for Aircraft Accident Inquiries," U.S. State Department policy, and any special agreement that may apply between the U.S. and any particular country. Public complaints that directly relate to safety shall be investigated as incidents in accordance with FAA Order 8020.11. Non-safety-related consumer complaints shall be handled in accordance with paragraph 271.

302.-306. RESERVED.

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